FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO.12 OF 2012.

M/s J.Square Steels Private Ltd. Vs. The Union of India and others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.N.B.Suryawanshi, advocate for the Appellant.
Dr.Kalpalata Patil Bharaswadkar, standing counsel for Respondent Nos.1 and 2.

CORAM : S.V.GANGAPURWALA & A.I.S.CHEEMA,JJ.
Date : 30.04.2015.

PER COURT :

1. Heard.

2. Mr.Suryawanshi, learned counsel submits that the appellant is directed to deposit an amount of Rs.30,00,000/- (Rupees thirty lacs) as pre-deposit U/s 35-F of the Central Excise Act. The learned counsel submits that the CESTAT has failed to consider the fact that no loss is caused to the revenue. The petitioner was entitled for the benefit of Cenvat credit. Rule 8 of the Central Excise Rule would not be applicable. The learned counsel submits that the Division Bench of the Gujarat High Court in a case of **"Indsur Global Ltd. Vs. Union of India"** reported in

MANU/GJ/0957/2014, has set aside and struck down Rule 8(3A) of the Central Excise Rules, 2002, insofar as said rule prohibits an assessee from utilising cenvat credit for payment of excise duty. The learned counsel submits that the show cause notice issued claiming duty amount of Rs.63,08,688/- (Rupees sixty three lacs lacs eight thousand six hundred eighty eight only) itself is erroneous. The appellant did not get opportunity to appear before the Commissioner (Appeals). The proceeding before the Commissioner (Appeals) is decided exparte. According to the learned counsel, the Company of the petitioner is closed and the manufacturing activity has come to a standstill since February 2008. The learned counsel submits that even communication made to the Department is placed on record. Even the communication of MSEB disconnecting the electricity supply is placed on record to show the financial hardship. All these aspects are required to be considered. The CESTAT be directed to decide the appeal on merits instead of asking for pre-deposit. It would not be possible for the appellant to make pre-deposit as manufacturing activity has come to a standstill. The documents placed on record would substantiate the said fact. The default which is alleged is made good on 30.4.2009 within two (2)months. The default as alleged is for February 2008 to June 2008, which is already made good. As such there is no loss of revenue. The learned counsel relies on the judgment of the Apex Court in a case of **"Benara Valves Ltd. Vs. Commissioner of Central Excise"** reported in **2006 (204) E.L.T. 513 (S.C.)** and the judgment of this Court in a case of **"Universal Ferro and Allied Chemicals Ltd. Vs. Customs, Excise and Service Tax Appellate Tribunal and another"** reported in **2004 (3) Mh.L.J.219.**

3. Mrs.Bharaswadkar, learned counsel for Respondents submits that the appellant was not entitled for the benefit of Cenvat credit. The payment that is alleged to have been made by appellant is through Cenvat which is not permissible. The appellant has defaulted in payment of duty. The Commissioner has rightly arrived at the conclusion. The purpose of pre-deposit is to safeguard the revenue. It is to safeguard the revenue, predeposit is required to be directed. The appellant is engaged in manufacturing activity, as such can not be heard to say that there is economic hardship. The amount of the electricity bills is sufficient to show high volume of manufacturing activity carried by the appellant. The learned counsel relies on the judgment of the Apex Court in a case of **"Indu Nissan Oxo Chemicals Industries Limited Vs. Union of India and others"** reported in **"(2007) 13 SCC-487.**

4. We have considered the submissions canvassed by the learned counsel for respective parties. The present appeal is limited to the extent of directions given to the appellant to make pre-

deposit of Rs.30,00,000/- (Rupees thirty lacs only). The duty claimed is about 63,08,688/- (Rupees sixty three lacs eight thousand six hundred eighty eight only). It has been held by the Apex Court in a case of **“Benara Valves Ltd. Vs. Commissioner of Central Excise”** reported in **2006 (204) E.L.T. 513 (S.C.),** so also in the case of **“Indu Nissan Oxo Chemicals Industries Limited Vs. Union of India and others”** referred supra that while dealing with the application U/s 35-F of the Central Excise Act, twin requirements i.e. undue hardship and interest of revenue are to be kept in view.

5. The CESTAT has directed to deposit Rs.30,00,000/- (Rupees thirty lacs only) as pre-deposit. The appellant has filed on record the communications made to the Department stating that he has stopped the production. Even the electricity connection has been disconnected as is seen from the documents filed on record. The present documents filed in the appeal were not before the Tribunal. The Tribunal did not have the benefit of going through the documents. As the question is only with regard to the pre-deposit, we do not feel it appropriate to remit the matter to CESTAT for the said purpose. Considering the documents filed on record and undue hardship shown, it would be appropriate to direct the appellant to deposit Rs.15,00,000/- (Rupees fifteen lacs only) by way of pre-deposit instead of Rs.30,00,000/- (Rupees thirty lacs

only) as directed by the Tribunal.

6. In the result, we pass the following order :

a) The impugned order directing payment of pre-deposit of Rs.30,00,000/- (Rupees thirty lacs only) is set aside. Instead the appellant is directed to make pre-deposit of Rs.15,00,000/- (Rupees fifteen lacs only) within a period of six (6) weeks from the date of this order. In case the appellant deposits the amount as directed in the present order, then the CESTAT shall hear appeal filed by the appellant on its own merits in accordance with law.

(A.I.S.CHEEMA,J.) **(S.V.GANGAPURWALA,J.)**

Dt..30.04.2015.
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